IN THE

Supreme Court of the United States

OCTOBER TERM, 1904.

SALLIE J. MCDANIEL,
NANNIE A. HOSHALL, AND
MARY E. JACKSON,
Appellants,
vs.
GEORGE M. TRAYLOR ET AL.,
Appellees.
No. 129.

STATEMENT.

This cause comes here upon a question of jurisdiction under the Act of 1891. The salient facts out of which it arose are these: On the 13th day of April, 1891, Hiram Evans, a resident of St. Francis County, Arkansas, died intestate, leaving as his only heirs the appellants and their brothers, James, John and William E. Evans. At the time of his death he was seized of a plantation of 760 acres, in that county, worth about $16,000.00, and owned a large amount of personal property, among which was a retail drug store in Forrest City. A few days after his death his son, James Evans, was appointed administrator by the Probate Court of St. Francis County, and after receiving his letters took possession of all the assets of the estate. His administration of the estate seems to have been informal, to say the least, for he never made any settlements of his accounts with the estate, and, shortly after

the date of his letters, he sold the drug store with all its stock, fixtures and accounts receivable, to his brother, John Evans, who thereupon took possession and conducted the business in his own name, making purchases in his own name from time to time as was necessary to replenish the stock on hand. In so doing he contracted debts to the several appellees aggregating the sum of three thousand dollars in amounts from five dollars to five hundred dollars, as well as obligations to various others not involved in this controversy, none of which was he able to pay. Confronted with this situation and pressed by his creditors, he sold and transferred the drug store and what remained of its contents to James Evans, individually, thus rendering himself wholly insolvent. As a result of the latter transaction the value of the claims held by the several appellees for goods sold to John Evans during his ownership of the drug store was materially diminished, and the possibility of their collection without costly litigation became remote. In these circumstances the appellees, either directly or through their representatives, contrived a plan for securing the payment of their claims out of Hiram Evans' estate. This scheme required the connivance of the administrator, who, as stated, was in default in the matter of his accounts, and so was easily induced by threats and promises of gain from the drug store to become a party to the proposed fraud. As charged in the bill, "thereupon the defendants herein conspired, colluded and confederated together and with the said John Evans and the said James Evans, administrator, to secure payment of their said claims and demands out of the assets of the said estate of Hiram Evans, deceased, and so conspiring and confederating, the said defendants presented to the Probate Court of St. Francis County, Arkansas, and the said James Evans, administrator, fraudulently and illegally approved for allowance, the several claims and demands against the said John Evans held by the defendants (naming them); and they, the said defendants and the said administrator, still conspiring and confederating together, procured *the judg-*

ment of the said Probate Court establishing the same against the said estate by concealing from the said Court the fact that the same were the debts and obligations of the said John Evans, and *cloaking the same under the name of expenses of administration of the said estate,* all of which transactions were part of the same scheme and were participated in by all of the said defendants and by said John Evans and said James Evans, administrator."

In fact, *the claims of these appellees were allowed in one judgment, and not separately and at different times.*

The appellants were kept in ignorance of the transactions between John Evans and his brother, the administrator, and of the nature of the claims held by the appellees and the manner in which the judgment of allowance was procured, and they did not discover the same until long afterwards, but immediately upon such discovery the appellants filed a bill, in April, 1895, in the state chancery court against the appellees to set aside the claims allowed against said estate, which included others in addition to those here involved. That court dismissed their bill, and the Supreme Court of Arkansas affirmed the judgment without prejudice as to further proceedings against the demands of these appellees, which are drawn into question in the instant case. Upon this decision the appellants, acting under the advice of counsel then representing them, set up the invalidity of the claims as a defense to a petition for an order of sale of real estate to pay debts, and that controversy pended continuously until the 11th day of January, 1902, when the Supreme Court of Arkansas decided that neither the probate court nor the circuit court on appeal had jurisdiction to hear equitable issues, and that therefore the remedy of appellants for the wrongs complained of lay in an original bill addressed to a court of equity. Immediately after that decision counsel now representing the appellants were retained and on the 27th day of March, 1902, the bill in this case was exhibited in the Circuit Court for the Eastern Division of the Eastern District of Arkansas.

The appellants, complainants below, are all citizens and residents of Arkansas, and each of the adverse parties is a citizen and resident of some other state, so that no question of diverse citizenship is involved.

The bill set out all the facts which have been stated, charged that the judgment of the Probate Court allowing the appellees' claims was wholly the result of conspiracy between them and John Evans and James Evans, the administrator, and the fraud practiced in furtherance of it, and that, although in equity null and void, the same was still an apparent lien and cloud upon the real estate described in the bill and the interest and estate of the appellants therein, and averred that under the law of Arkansas the Probate Court was powerless to arrest or set aside the judgment allowing the claims after the term at which it was rendered, and that the time for appeal had expired long before these appellants had knowledge of the facts or of anything from which they could have acquired knowledge.

The prayer was that the judgment of the Probate Court of St. Francis County, Arkansas, allowing and classifying the claims of the appellees be set aside, and that the said judgment and claims be decreed not to be valid or lawful liens against the real estate described, or the interest and estate of the appellants therein, and that the appellees be forever enjoined and restrained from attempting to assert or collect them, or taking any manner of benefit or advantage thereunder.

In due time some of the defendants appeared and demurred for want of equity in the bill and lack of jurisdiction in the Circuit Court, and the Court sustained the demurrer and dismissed the bill for want of jurisdiction because no one of the claims upon which the fraudulent judgment was predicated exceeded in amount the sum of two thousand dollars.

The appellants contend here, as they did in the lower court, that

1. This is a proceeding to remove a cloud from

title, and therefore the amount in dispute is not the value of the defendants' claims, but the value of the property upon which the cloud rests, in this case $16,000.00.

2. Such being the fact, the complainants might have exhibited their bill against any one of the defendants, and so might join them all in the same bill, unless such action would make the bill multifarious.

3. The bill was not multifarious, because the defendants were interested in the same claim or right, which rested upon the same facts, and the relief asked was the same as to each, and because, even if separate as to each, the acts complained of were part of the same fraudulent scheme or conspiracy.

The error complained of is the dismissal of the bill for want of jurisdiction, involving, as it did, a ruling against each of the above propositions.

BRIEF.

I.

The bill is one for the removal of a cloud from title within the meaning of the rule that in such cases the value of the property upon which the cloud rests, rather than the amount of the defendant's claim, is the amount in controversy for jurisdictional purposes.

Bills in equity for the removal of a cloud from the title to real estate had their origin in the bill *quia timet* of the old practice. That was itself the evolution of one of the ancient "writs of prevention" which Lord Coke says could be maintained *quia timet.*

Co. Litt. 100, a.

Of the six which he mentions, the last is the writ *"ne injuste vexes,"* and it is from this that the bill *quia timet* came. Both were precautionary in their character and intended to prevent anticipated wrongs rather than to redress those which had already been done. The instances in which the bill would lie were numerous and varied, and it need only be said here that it was maintainable wherever there was a cloud or incumbrance valid at law, but which equity would not respect or enforce.

A cloud upon title is defined to be an outstanding claim or incumbrance which, if valid, would impair or affect the title of the owner of a particular estate, and which on its face has that effect, but by extrinsic facts is invalid.

Black, Law Dict. 214.

Welden vs. Stickney, 1 App. Cas. (D. C.) 343.

"A cloud upon one's title is something which constitutes an apparent incumbrance upon it, or an apparent defect in it: something that shows *prima facie* some right of a third party, either to the whole or some interest in it."

Cooley, Taxation, 542.

Detroit vs. Martin, 34 Mich., 170.

"A cloud upon title is a title, or incumbrance, apparently valid, but in fact invalid."

Bissell vs. Kellogg, 60 Barb., 629.

"A title which, if put in evidence, would compel the production of defendant's title as a defense, is a cloud."

Lick vs. Ray, 43 Cal., 83.

"If the title is obscured, so as to render the right of the real owner less clear, there is a cloud."

Ward vs. Dewey, 16 N. Y., 531, 1. c.

This was the successful argument of the Attorney General, Sir John Mitford, in Byne vs. Vivian, 5 Ves., 604.

Whenever a deed or other instrument exists which may vexatiously or injuriously be used against a party after the evidence to impeach or invalidate it is lost, there is a cloud upon the title which equity will remove upon a proper showing.

Dull's Appeal, 113 Pa. St., 516, 1 c.

From these authorities and the allegations of the bill it necessarily follows that the judgment of the Probate Court of St. Francis County, allowing the claims of the appellees, is a cloud upon the title to the real estate described. Upon the record that judgment is valid, but in the light of extrinsic facts pleaded and by the demurrer admitted, it is void. It is an apparent lien under which, for aught the judgment roll discloses, the entire right and title of the appellants might be extinguished.

By all the adjudicated cases in the federal jurisdiction the test of the amount in controversy in similar circumstances has been the value of the real estate upon which the cloud rests and not the value of the defendant's claim.

> "Thus, a suit to quiet title to parcels of real property, or to remove a cloud therefrom, by which their use and enjoyment by the owner are impaired, is brought within the cognizance of the Court, under the statute, only by the value of the property affected."
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> *Smith vs. Adams, 130 U. S., 175, 1. c.*

While it is true the case was not one involving relief against a fraudulent judgment based upon a money demand, the words used are plain and unequivocal and not subject to a construction which would exclude such cases. The thoughtful jurist who penned the words quoted was never at a loss for expressions to fit his meaning, and had he in-

tended to limit the doctrine he was announcing to "a cloud on the title consisting of a claim on the part of the defendant which would affect the absolute title of the property, and which could not be discharged by the payment of money," doubtless he would have made it plain.

So, too, in Parker vs. Morrill, 106 U. S., 1, the conclusion of the Court was based upon the very theory afterwards announced in Smith vs. Adams. The case was one to remove a cloud upon the title to a portion of certain lands, and the value of that part upon which the claim rested was treated as the amount in controversy. True, the appeal was dismissed, but it was done solely because the record failed to disclose the value of the lands.

Both these cases were followed by the Circuit Court in the Western District of Texas in a suit to set aside certain fraudulent conveyances as a cloud upon title.

Simon vs. House, 46 Fed., 317.

In the latter case Judge Maxey held that "in a proceeding to set aside certain conveyances as fraudulent and a cloud upon plaintiff's title, the 'matter in dispute' within the meaning of the Act of Congress of August 13th, 1888, limiting the jurisdiction of the United States Circuit Court, is the value of the land." His opinion contains liberal quotations from the previous decisions and discusses the jurisdictional question at length, yet there is nothing in it which confines the rule to "claims which would affect the absolute title of the property and which could not be discharged by the payment of money."

> "In a suit to quiet title, it is not the value of the defendant's claim that constitutes the amount in controversy; it is the value of the whole of the real estate to which the claim extends."

Woodside vs. Ciccroni, 93 Fed., 1.

In that case it was strenuously urged that the subject in controversy was not the whole of the real estate, but only the interest therein conveyed to Anderson. To this argument the Circuit Court of Appeals in the Ninth Circuit declined to yield, answering it, through Judge Gilbert, thus:

> "If the interest so conveyed to Anderson were confined to any definite portion of the real estate, there can be no doubt that the matter in controversy would be limited to that portion, and the value thereof would be the amount involved. But the rights granted to Anderson cover the whole of the land. No portion of it is exempt from the privilege of right of way, and the right to prospect and mine which he thereby acquired. Such being the case, the claim of the defendants affects the right of the complainant to the enjoyment of the whole of his estate."

And so it is in the instant case; the rights acquired by the appellees under the judgment of the Probate Court of St. Francis County "cover the whole of the land," and clearly their claims under it "affect the right of the complainants to the enjoyment of the whole of their estate."

It may be that concealed somewhere between the lines of Judge Gilbert's concise opinion lies the "distinction" which the Court below declared to be "fully recognized" in that case, but the perception of counsel has not been keen enough to discover it, and it must be left for counsel on the other side to point out. Nowhere within the length and breadth of that opinion is there one word which in its widest import tends to confine the rule to the limits given it by the Circuit Court in the case at bar.

All these cases were cited and again followed in Cowell vs. City Water Supply Co., 96 Fed., 769. There the plaintiff was the owner of but one bond of the value of one thousand dollars. The object of his bill was to set aside mortgages on real property worth nearly five hundred thousand dollars. A

motion to remand on the ground that the jurisdictional amount was not involved was overruled and the case went to the Circuit Court of Appeals. There the lower Court was overruled on the ground that the complainant appeared from the allegations of the bill to be the owner of only one three hundred and twenty-fifth part of the property, instead of the owner of the whole. In the course of his opinion, Judge Sanborn, after citing most of the foregoing cases, said:

> "If the complainant were the owner of the water works, these cases would be controlling, and the value of that property would be the test of the jurisdiction of the Court below. But since he claims to be the owner of only one three hundred and twenty-fifth part of this property, this fraction of its value, and not its whole value, is the test of the jurisdiction in this case, and that test defeats it."
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> *Cowell vs. City Water Supply Co., 121 Fed., 53.*

Concurring in the disposition of that case, Judge Thayer said:

> "Inasmuch as the complainant in this case seeks by his bill to have certain mortgages annulled and cancelled, that are a lien upon the property in which he claims to have an equitable undivided interest, the action must be characterized as one to remove a cloud upon title. * * * In suits to remove a cloud upon a title, the value of the property affected or imperiled by the proceeding determines the amount actually in controversy, for jurisdictional purposes. Smith vs. Adams, 130 U. S., 167, and cases there cited."
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> *Cowell vs. City Water Supply Co., 121 Fed., 57, l. c.*

In the case at bar the whole property is shown by the bill to be worth sixteen thousand dollars, and

it also appears that the complainants are three of the six heirs-at-law, so it necessarily follows that the amount in controversy is eight thousand dollars, whether there is but one defendant with a claim of one dollar or five thousand dollars, or a dozen of them with claims joint or several exceeding the jurisdictional amount.

The decisions of the courts of last resort in the several states are in perfect harmony with the federal cases to which reference has already been made. Thus, in Michigan, Judge Cooley early held that "the jurisdiction, where the title to or enjoyment of one's real estate is in question, does not depend upon the amount of the claim asserted against it, but upon the value of the land itself."

Fuller vs. Grand Rapids, 40 Mich., 395.

And that case has been approved and followed in Wight vs. Roethlisberger, 116 Mich., 241, holding that the jurisdiction to restrain the sale of lands under execution depends upon the value of the lands, rather than upon the amount of the judgment; and again in Dodge vs. VanBuren, 118 Mich., 189, holding in a bill for injunction against the enforcement of a void lien, the value of the property and not the amount of the lien is the test of jurisdiction. To the same effect are the following cases:

CONNECTICUT:

Scripture vs. Johnson, 3 Conn., 211.

LOUISIANA:

Queyrouze vs. Thibodeaux, 30 La. An., 1114.

Simon vs. Richard, 42 La. An., 842.

VIRGINIA:

Kahn vs. Kerngold, 80 Va., 342.

WEST VIRGINIA:

Ayres vs. Blair, 26 W. Va., 558.

In none of the cases mentioned is there any intimation that the test of jurisdiction is limited to "claims which would affect the absolute title of the property, and which could not be discharged by the payment of money." Even were it otherwise, it is difficult to imagine any cloud upon a title which is more likely to "affect the absolute title" than a judgment which becomes a lien upon it. No lien ever existed which could not be discharged by the payment of money in some amount, and no adverse claimant ever refused his price.

The error into which the Court below fell cannot be made plainer than by the case of Berthold vs. Hoskins, 38 Fed., 772. The bill in that case was to have declared void a tax sale of the property for forty-one dollars and eighty-five cents which clouded the complainant's title. Under the state law, as appeared from the proof taken, the complainants had an existing right of redemption, or, in other words, the power "to discharge the lien by the payment of money," to-wit: the amount due as taxes with interest and certain statutory penalties.

Now it is perfectly plain that this is an application of the rule under discussion in just such circumstances as those to which the Circuit Court in this case held it inapplicable. The absolute title to the complainant's property was affected in no different degree, and the lien under the state statute could have been "discharged by the payment of money," as well as could the inequitable claims against Hiram Evans' estate. Here, as there, the owners of the property declined to do that, choosing rather to call upon equity to relieve them. That case has gone unchallenged for fifteen years, having done duty in more than one instance as a sustaining authority, and it would seem that it ought not now to be discredited, especially since it is in consonance with the rulings of this court in like cases.

The distinction which the Circuit Court probably had in mind was thus commented upon by Judge Selden, of the Court of Appeals in New York:

> "There is, however, an obvious distinction between those instruments which merely create a personal claim against a complainant and those which affect his property, and especially his real estate. The first can rarely do him any injury so long as they remain dormant, while the latter may create such a cloud upon his title as seriously to impair its value."
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> *Ward vs. Dewey, 16 N. Y., 531.*

Or, in other words, a forged note or other fictitious debt is one thing, while a judgment founded on either is quite another thing, so far as his property is concerned, all of which is only another way of saying that in one instance he has an adequate remedy at law, and in the other he has not.

The case of Cooper vs. Preston, 105 Fed., 403, has not been overlooked. On the contrary, it is considered an authority for the contention of appellants here. In that case, just as here, there were numerous parties. The value of the property exceeded two thousand dollars, but there was no allegation in the bill that the defendant's claims rested upon the same right or that any other privity of interest existed between them.

Judge Morrow, on the Circuit, in sustaining a plea to the jurisdiction, said:

> "In the absence of such an averment, complainant cannot maintain the jurisdiction of this Court upon the allegation that the value of the entire matter in controversy exceeds the jurisdictional amount. The rule is that where there are several defendants in an action in the United States Circuit Court it must appear affirmatively that each defendant is liable to be sued. In other words, where the controversy relates to a piece of property of the jurisdictional value, it must appear that all the defendants have a privity of interest derived from a common source of title, or it must appear that the separate claim of each defendant is of the

jurisdictional amount; Stemmler vs. McNeill, 102 Fed., 660, and cases there cited. In the present case the bill of complaint does not conform to this rule. The pleas must, therefore, be sustained."

What was lacking there is present here, and the corroliary of the proposition laid down by Judge Morrow is that when such allegations are contained in the bill the jurisdiction exists.

In the judgment of counsel, enough has already been said to demonstrate the error of the Circuit Court in ruling against the jurisdiction, and the question is submitted in perfect confidence of the correctness of the argument advanced.

II.

"he value of the property being the test of the jurisdictional amount, the complainants could have proceeded against any of the defendants irrespective of the amount of his claim, and therefore may join all in one bill, unless that would make the bill multifarious.

It would seem that this proposition is the necessary sequence of what has been said under the preceding paragraph, if the argument there advanced is sound. In fact, to do otherwise than join in one bill all defendants claiming under the same title against which the same fraud is alleged, would be to provoke a multiplicity of suits, a result the prevention of which has induced the earnest efforts of the chancellors from the earliest times. Were it true that any of these claims differed in any particular other than amount, or that the invalidity of any one rested upon facts different from those vitiating the others, there might be no joinder of defendants, but such is not the case here.

That the joinder of these defendants does not make the bill multifarious is plain from the fact

that the defendants have a common interest centering in the point at issue in the case.

Fellows vs. Fellows, 4 Cow., 632.
Story, Eq. Pl., sec. 271.

And it would be so even if the defendants claimed under separate judgments, where all were attacked for the same fraud.

Gaines vs. Chew, 2 How., 619.

The point is fully sustained by all of the cases cited and discussed in the following paragraph of the argument.

III.

Even though the value of the real estate is not the true test of the amount in controversy, the complainants were entitled to join the several defendants in one bill, and when so joined the aggregate amount of their claims was the amount in controversy.

Passing over the argument in support of the jurisdiction on the value of the real estate, or the interest of the appellants in it, the error of the Circuit Court may be demonstrated on another theory. To the general rule that where there are several parties on one side of a case each must have an interest, independent of the others, exceeding in value the jurisdictional amount, there are exceptions, as there are to almost all general rules. Where it appears from the allegations of the bill that the claims of each of the numerous class arise out of the same transaction and rest upon the same questions of law and fact, and the relief prayed by or against all is the same, there is such a community of interest that they may be joined in one bill.

1 Pomeroy, Eq. Jur. (2d Ed.), sec. 269.
Sheffield Water Works vs. Youmans, L. R. 2, Ch. 8.

Campbell vs. Mackay, 1 Myl. & Cr., 603.
Hardie vs. Bulger, 66 Miss., 577.
DeForrest vs. Thompson, 40 Fed., 375.
Brown vs. Safe Dep. Co., 128 U. S., 403.
N. Y. & N. H. R. R. Co. vs. Schuyler, 17 N. Y., 592.

Even if the transactions of which complaint is made were separate as to the several defendants, yet if it is alleged that all were part of the same fraudulent scheme or conspiracy, the bill is not multifarious.

Duff vs. Bank, 13 Fed., 65.
Pullman vs. Stebbins, 51 Fed., 10.

> **"No bill is multifarious which presents a common point of litigation, the decision of which will affect the subject matter and settle the rights of all the parties."**
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> *Sanborn, Circuit Judge, in Curran vs. Campion, 85 Fed., 67.*

In each of the cited cases there were several defendants, and in most of them there were more complainants than one, so there can be no distinction in the number of parties on the opposite side.

Now, in all the cases where it has been held that the aggregate of the several claims could not be considered the amount in controversy, the ruling has been justified on the theory that the interests of the parties were so distinct as to require separate judgments to dispose of them, but where the interests are the fruits of a fraudulent conspiracy in which each of the several parties is an active participant and are to be measured by the same rules of law under the same facts as to each, it is clear from the foregoing authorities that all stand united in interest and may be disposed of by one decree. And it is but a step further in the course of logical reasoning to say that the value of the thing in issue,

in such a case, is the sum of all the claims of the defendants.

It is, perhaps, inevitable that in the administration of every system of jurisprudence precedents should be followed at times without consideration of the real reasons upon which they rest, but, despite that, the maxim "*Cessante ratione cessat lex*" has lost none of its import. Be that as it may, however, the sanction of judicial authority for the proposition in hand is not wanting.

> "As all the judgments in law were held in the same right and against the same parties, and as their validity depended upon the same facts, the defendant therein, in order to prevent a multiplicity of suits and the vexation and costs arising from numerous executions and levies, was entitled to bring one suit for a final decree determining the matter in dispute that was common to all the parties; and as, under the rules of equity, such a suit could be brought in a court of the United States, the aggregate amount of all the judgments sought to be annulled was the value of the matter in dispute."
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> *Marshall vs. Holmes, 141 U. S., 589.*

In the instant case, as there, the judgment of the Probate Court establishing their demands as valid claims against Hiram Evans' estate is enjoyed by these appellees in the same right and depends for its validity upon the same facts as to each of them. More than that, each of the several claims was against the same person and arose out of the same state of facts. The only distinction between that case and this is that there one person held twenty-three judgments against the same person which were alleged to be void, while here thirty defendants assert one judgment into which have been merged thirty separate demands, but that is necessarily a distinction without a difference, unless the plurality of the judgment creditors is an element where the multiplicity of judgments is not. That it is not is obvious, because on the one hand the case is

merely one of common ownership of a single fund, the distribution of which has no bearing on jurisdictional questions, while on the other it is a case of several funds owned by a single person. From the earliest days it has been the rule in this Court that in the former class of cases the jurisdiction is determined by the amount of the whole fund, the proportion of it due to each of the claimants being immaterial, even though their several interests in it do not arise out of the same facts. In an early case where a trustee had converted the property of an estate of a value exceeding the jurisdictional amount and in which a decree was rendered ordering him to make restitution and distributing it in shares less than that sum, the jurisdiction was sustained. Said Mr. Chief Justice Taney, in such a case:

> "The matter in controversy was the sum due to the representatives of the deceased collectively, and not the particular sum to which each was entitled, when the amount was distributed among them, according to the laws of the state. They all claimed under one and the same title. They had a common and undivided interest in the claim; and it was perfectly immaterial to the appellant how it was to be shared among them. He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to share, the dispute was among themselves and not with him. It is like a contract with several to pay a sum of money. It may be that the money when recovered is to be divided between them in equal or unequal proportions. Yet, if a controversy arises on the contract, and the sum in dispute upon it exceeds two thousand dollars, an appeal would clearly lie to this Court, although the interest of each individual was less than that sum."
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> *Shields vs. Thomas, 17 How., 3.*

Recognition was accorded the same principle years later, when Mr. Justice Bradley, speaking for the Court, said, citing many such cases:

> "The general principle observed in all is that if several persons be joined in a suit in equity or admiralty, and have a common or undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction."
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> *Clay vs. Field, 138 U. S., 479, l. c.*

More to the point, perhaps, are the words of Mr. Justice Gray in a case in which a fund exceeding the jurisdictional amount was claimed by a large number of persons, some of whose demands were less than the required sum. In holding that the jurisdiction existed as to all, he said:

> "The trust fund so administered and ordered to be distributed by the Circuit Court amounting to much more than $5,000.00, the appellate jurisdiction of this Court is not affected by the fact that the amounts decreed to some of the creditors are less than that sum. It was immaterial how the sums decreed to be paid by them should be distributed, and the case does not fall under that class in which creditors, who might have sued separately, join in one bill for convenience and to save expense."
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> *Handley vs. Stutz, 137 U. S., 369, L. C.*

> "The rulings of this Court are uniform and consistent to the effect that where several plaintiffs claim under the same title, and the determination of the cause necessarily involves that title, this Court has jurisdiction, though the individual claims of none of them exceed the requisite amount."
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> *Davis vs. Schwartz, 155 U. S., 647.*

And so, by the same token, where the numerous parties are defendants instead of plaintiffs.

Is it not clear that by the authority of these cases the jurisdiction was to be determined by the aggregate amount of the claims which were merged into

a judgment declaring that the lands descended to these appellants should be sold to pay that amount? The issue was whether they should enjoy the heritage as it came to them, or pay more than three thousand dollars, failing which they would lose it; and the value of the thing in controversy, if not the value of the lands, was certainly three thousand dollars. Nor can it be otherwise, because after such payment, if any was made, the money would be divided between many claimants in small amounts. That result neither added to or diminished their burden, nor did it concern them in any other way. It was a matter in which the claimants alone were interested, and a dispute as to the apportionment could arise only among themselves.

Another and most recent authority supporting the contention of the appellants here is Illinois Central R. R. Co. vs. Coffery et al., 128 Fed., 770. There twenty-seven ticket brokers, some as individuals and others as partners, were engaged in buying and selling non-transferable railroad tickets. The complainant joined them as defendants in the same bill, although there was no connection between them except that they were engaged in perpetrating the same general wrong. A demurrer was interposed on the ground *inter alia* of multifariousness; that each defendant acted independently of the other and could only be proceeded against alone. In overruling the demurrer, Judge Thayer said, touching this point:

> "It is too plain for serious controversy that the convenience of all parties, including the defendants and court in which the cases are pending, will be subserved by allowing the action to proceed against the defendants collectively. Nor is it perceived that the substantial rights of any of the defendants will be jeopardized by so doing. It is not suggested that they have separate defenses to make, and even if a separate defense does exist in favor of any defendant, it can be urged with the same facility and effect in the present suit as if such defend-

ant was sued separately, and probably at less cost. Indeed, the Court feels persuaded that the plea of multifariousness is urged mainly to delay a final hearing, rather than to enable the defendants to make a defense on the merits, which they can better make if sued separately. It may be conceded that persons ought not to be called upon to make a defense to actions against third persons, when the cause of action is one with which they have no concern, and where they are in the attitude of idle spectators of the controversy; but where the cause of action is one in which they have an immediate interest, because a like cause of action exists against themselves, to which they make the same defense as others will make, and by joining them with others the convenience of everybody, including the Court, is subserved, and the rights of every one may be safeguarded and valuable time saved, no reason is perceived why they may not be joined, there being no hard and fast rule of law which forbids. Such is the case at bar. The defendants have a common interest in the questions to be litigated and it is desirable that they be heard and determined in a single trial."

These authorities amply sustain the proposition that a joinder of the several defendants below did not make the bill multifarious, and if the value of the real estate is the amount in controversy in these cases the complainants might have sued each of the defendants separately.

Hence their joinder in one bill was both permissible and proper.

In the opinion of the Circuit Court (123 Fed., 338), its ruling against the proposition was justified upon four cases which it designated as "directly in point" (Walter vs. Railroad Co., 147 U. S., 370; R. R. Co. vs. Walker, 148 U. S., 392; Fishback vs. Tel. Co., 161 U. S., 96; and Bank vs. Cannon, 164 U. S., 319).

Examination of these discloses that all of them were bills for injunction to restrain the collection of state taxes (a matter of no special favor in the federal courts at best), in which were joined the officers of different counties who had levied or were attempting to collect separate assessments made at various times. The ineptitude of these authorities seems apparent at a glance, and the lack of similarity is the plainer under the doctrine of Gibson vs. Shufeldt, 122 U. S., 27.

Respectfully submitted,

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